Cri A 12.00/98

(18)

(2)

S. T. No. 141/95

CF0000059995

APPEAL PRISONER

Division Bench (Criminal)

542 Name सोमारू

Father's Name सुकलो Resident ग्राम - तेलीपेंदा
थाना - कुटरू, बस्तर

Age 50 Sentenced to आजीवन कारावास on 5/10/96

Under Section 302 I.P.C. by सत्र न्याया० जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 5.10.96
3. Date on which appeal sent :- 31.10.96
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 542 Name सोमारू पिता सुकलो

Continued in जिला Jail जगदलपुर

No. 463 /कोटा Dated 31/10/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR tegether with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
Superintendent Central Prison / Sub-Jail.
जगदलपुर

Date of receipt in C. J. M. Office. 15/11/96

Date of receipt of record to accompany. ×

Memo of Appeal of the Appellate Court. ×

No. 19(1) dated 18/11/96

Forwarded to the H'ble the Sessions Judge Jagdalpur

With in time

C. R. MAGISTRATE

मुख्य न्यायिक दण्डाधिकारी
जगदलपुर 18.11.96

Date of receipt in Applieate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(14)

आदेश पत्रक

मामला क्रमांक Cr. A. No. 1200/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1200 of 1998

Appellant : Somaru

Vs.

Respondent : The State of Madhya Pradesh

Ms. Sofia Khan, learned counsel for the appellant.
Shri Akhil Mishra, learned P.L. for the State/respondent.

ORAL JUDGMENT
(Delivered on 24th January 2006)

L.C.Bhadoo, J

Even though this matter was listed for hearing on I.A. No. 3008/2000, however counsel for the parties submitted that the matter may be heard finally. Therefore the matter was heard finally on the consent of the parties.

2. By this appeal under section 374 (2) of the Code of Criminal Procedure through Superintendent, District Jail, Jagdalpur, the accused/appellant has questioned the legality of judgment of conviction and order of sentence dated 05/10/1996 passed by learned Additional Sessions Judge, Bastar in Sessions Trial No. 141/1995 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of the murder of one Lakshman Kalar convicted him under Section 302 of the IPC and sentenced him to undergo imprisonment for life.

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 1200 सन् 1998

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	3. Case of the prosecution, in brief, is that on 22nd January 1995 the accused/appellant along with deceased Lakshman Kalar, went to the market of Kutroo where both of them purchased rice and oil worth Rs. 50/- each and the deceased gave the purchased articles to the accused and when in the night deceased went to the house of the accused to collect the articles, during that period some hot words were exchanged between the two and in the process, deceased Lakshman Kalar slapped twice to the accused. On this, accused got enraged and picked up the axe lying in his house and attacked the deceased five times as a result of which the deceased fell down on the ground and died spontaneously. The matter was reported by P.W.1 Sukuldhar in the police station Kutroo. The S.H.O. after registering the FIR (Ex.P.6) left for the scene of occurrence where the body of the deceased was lying and took into possession the blood stained soil and plain soil (Ex.P.3) and the weapon of offence was taken into possession vide Ex.P.2. Panchnama (Ex.P.1) of the body of deceased Lakshman was prepared. The body was sent for post mortem examination to Primary Health Centre, Bijapur where Dr. Nitin Patel (P.W.4) conducted the post mortem on the body of the deceased and prepared the post mortem report (Ex.P-12). After completion of the investigation, the S.H.O. filed the charge sheet in the Court of Additional Chief Judicial Magistrate, Jagdalpur who in turn committed the case to Sessions Judge, Jagdalpur from where the learned Sessions Judge received the case on transfer for trial.	
	4. The prosecution examined four witnesses in order to establish the charge against the accused/appellant. The statement of the accused was also	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 1200/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.

5. The learned Sessions Judge after hearing the Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragfaph two of the judgment.

6. We have heard learned counsel for the parties.

7. The homicidal nature of death of Lakshman is not in dispute.

8. As far as the involvement of the accused in committing the murder of Lakshman is concerned, the conviction is based on the extra judicial confession made by the accused/appellant in the panchayat before P.W.1 Sukuldhar & P.W.2 Chetan. Learned counsel for the accused/appellant argued that the evidence of P.W.1 Sukuldhar & P.W.2 Chetan is not worth reliance as there are contradictions in their evidence. However learned Additional Public Prosecutor supported the judgment of the trial Court.

9. However in order to appreciate the arguments advanced by the counsel for the respective parties, we have perused the evidence of P.W.1 Sukuldhar & P.W.2 Chetan. P.W.1 Sukuldhar has stated that in the night at about 8.00 p.m. the accused called him as his house is near the house of the accused, he went there and by that time Chetan, Mansingh and Doge also came there. They saw that Lakshman was lying dead near the house of accused and there were five injuries on the body of Lakshman The accused made extra judicial confession that he along with the

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आदेश पत्रक

मामला क्रमांक Cr. A. No. 1205/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	deceased purchased two bottles of oil when accused enquired from Lakshman about his bottle of oil, deceased said that the same is kept under the bag. When he did not find it in the bag, deceased Lakshman slapped him twice whereupon the accused picked up the axe, attacked him with axe and murdered him. He further stated that the whole night they were watching the body of Lakshman and in the morning a panchayat was convened and in the panchayat the accused/appellant made extra judicial confession that he had murdered Lakshman.	
10	P.W.2 Chetan has stated that at about 9.00 p.m. in the night when he was at his residence, the accused, raised shout from his house that he has attacked Lakshman five times with the axe. On this he along with Man Singh, Sukuldhar & Doge went to the house of the accused and saw that Lakshman was lying on the door of the accused and was breathing but was not able to talk and there were injuries on his neck, left arm and left leg. The accused was standing near the body and he disclosed that on account of dispute regarding oil he has murdered Lakshman. He further stated that he has attacked him with axe and brought the axe and shown to them which was stained with blood.	
11	In the cross examination of these two witnesses the defence has not elicited anything which makes the evidence of these witnesses unreliable or untrustworthy. The extra judicial confession made before these two witnesses lends support from the fact that they witnessed the body of Lakshman was lying on the gate of the house of the accused and the injuries were present on the body of the deceased, therefore there is no reason to disbelieve the extra judicial confession made by the accused	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before these two witnesses, therefore, involvement of the accused/appellant in committing the crime in question is established.

12. Now coming to the question regarding the offence committed by the accused it has come in the evidence that when the dispute arose between the accused and the deceased, the deceased slapped twice the accused which enraged the accused and on the spur of moment without premeditation and preplan the accused picked up the axe lying nearby and attacked the deceased in the heat of passion upon a sudden quarrel, therefore, we are of the considered opinion that the case of the accused is covered under Exception 4 of Section 300 of the IPC and as such the offence under Section 302 of the IPC is not made out whereas the offence under Section 304 –II of the IPC is made out against the accused.

13. In the result the appeal partly succeeds and the judgment of conviction and order of sentence awarded under Section 302 of the IPC are set aside. Instead thereof, we hold the appellant guilty of offence under Section 304-II of the IPC and sentence him to undergo RI for ten years. However, as the appellant is in jail since 25.01.1995 and as such he has already undergone the jail sentence imposed upon him, therefore, the accused/appellant is directed to be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge